

REMARKS/ARGUMENTS

Rejection of Claims 1-24 Under 35 U.S.C. §112, First Paragraph

The Examiner contends that the above-referenced claims fail to comply with the written description requirement and contends that the subject matter is not described in the specification in a way so as to reasonably convey to one of skill in the art that the inventor had possession of the claimed invention. Other than such a conclusory remark, the Examiner fails entirely to support such a contention. The application as filed comprises 23 written text pages and 17 separate pages of detailed pictorial drawings illustrating various embodiments of the present invention. Despite this fact, the Examiner contends that “no reasonable search can be made at this time.” The Examiner argues that various perspective views of different embodiments of the present invention do “not illuminate the various elements in sufficient detail to disclose how they interact with each other to form the claimed invention.” Specifically, the Examiner contends that while “special control path 8” is in the specification, the Examiner further alleges that Applicant “fails to illuminate the structure.” This is simply incorrect. The Examiner’s attention is directed to Figs. 7A and 7B where reference number 8 is used on the figures. Moreover, the specification clearly states that “the pivotal movement of the control rod 5f is carried out through the form-fit engagement of the control rod 5f in the control path 8, which is part of the vehicle-cover control element 5d. (See also, Figs. 7A, 7B).

It is well established that a patent application shall include a drawing only where such is necessary for the understanding of the subject matter sought to be patented. 35 U.S.C. § 113 (2007); 37 C.F.R. § 1.81(a) (2007). Drawings (like models) however, are not required in a patent application. The general enablement requirement is satisfied when the specification sets forth sufficient detail to allow one skilled in the art to practice the claimed invention without undue experimentation. *Amesbury Group, Inc. v. The Caldwell Manuf. Co.*, No. 05-10020-DPW, 2006 U.S. Dist. LEXIS 2175, *78 (D. Mass. Jan. 20, 2006). The scope of protection over a patentee’s claims is defined by the words of the claims and the written description. *TI Group Auto. Sys. v. VDO N. Am., L.L.C.*, 375 F.3d 1126, 1138 (Fed. Cir. 2004). Drawings may be limited to a particular embodiment without confining or restricting the scope of the claims. *Id.* In the present case, the written description (which includes the submitted drawings) is sufficient to provide an enabling description of the claimed invention. Here, no further drawings are necessary to comply with the patent statute and regulations.

For the above reasons and factual basis provided in the specification, Applicant respectfully requests the Examiner's reconsideration and withdrawal of the §112, first paragraph rejection of Claims 1-29.

Rejection of Claims 1-29 Under 35 U.S.C. §112, Second Paragraph

The Examiner contends that "the amended claims are illogical in at least Claim 1." The Examiner asks what structure corresponds to a single cover (line 2) or multiple covers (line 4) and further what structure corresponds to "an electric drive ... are each movable independently" Applicant does not understand the Examiner's confusion. Vehicle cover 1 is not only repeatedly mentioned in the specification, but is also pictured in all of the drawings. Claim 1, as amended, comprises "at least one at least partly transparent vehicle cover", thus contemplating that more than one vehicle cover (which cover is at least partly transparent) may be encompassed by such claim. To clarify this issue for the Examiner, however, Applicant has amended Claim 1 to remove the plural form and rely therefore on "at least one of said partly transparently vehicle cover" to connote that one or more vehicle covers are encompassed by the present claims.

The Examiner also contends that Claim 3 defines alternative structure which is allegedly contrary to statute. In response, Applicant notes that MPEP 2173.05(h) expressly provides that "alternative expressions are permitted if they present no uncertainty or ambiguity with respect to the question of scope or clarity of the claims." Applicant respectfully contends that Claim 3 does not present uncertainty or ambiguity and therefore requests that the Examiner reconsider and withdraw any rejection of claims based thereon. In the alternative (no pun intended), Applicant would be amenable (if deemed necessary) to having Claim 3 presented in a Markush claim format, such that the two alternatives stated in Claim 3 are presented in a claim format that is particularly sanctioned by the USPTO.

The Examiner contends that it is unacceptable to define terms, such as "detachable fixed bearing", as used in Claims 9 -10. The Examiner cites no legal authority or MPEP section for such a proposition. A patentee may act as its own lexicographer and assign to a term a unique definition that is different from its ordinary and customary meaning. *Bell Atl. Network Servs. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1268 (Fed. Cir. 2001). If the Examiner has concerns with respect to whether one of ordinary skill in the art would understand the claim term, the Examiner can make an appropriate rejection based thereon. As indicated, however,

Applicant is at a loss as to what is improper (and therefore does not understand where the Examiner's conclusion of "unacceptable" derives from) with respect to the claim language employed.

Applicant therefore requests the Examiner's reconsideration and withdrawal of all §112 rejections of the present claims.

Drawings

The Examiner has not objected to or rejected any claims based on the drawings, but nevertheless contends that "the drawings in this application fail to illustrate the details of the structure of Figs. 2-6 and 8 in sufficient detail to enable one to make and use the invention." Applicant respectfully disagrees. The general enablement requirement is satisfied when the specification sets forth sufficient detail to allow one skilled in the art to practice the claimed invention without undue experimentation. *Amesbury Group, Inc. v. The Caldwell Manuf. Co.*, No. 05-10020-DPW, 2006 U.S. Dist. LEXIS 2175, *78 (D. Mass. Jan. 20, 2006). The scope of protection over a patentee's claims is defined by the words of the claims and the written description. *TI Group Auto. Sys. v. VDO N. Am., L.L.C.*, 375 F.3d 1126, 1138 (Fed. Cir. 2004). Drawings may be limited to a particular embodiment without confining or restricting the scope of the claims. *Id.* In the present case, the written description (which includes the submitted drawings) is sufficient to provide an enabling description of the claimed invention. As such, Applicant respectfully requests the Examiner reconsider and withdraw all objections relating to the drawings provided in the present case.

Inappropriateness of Making the Second Office Action Final

Under the circumstances, because the Examiner has admitted that “no reasonable search” was made by the Examiner in response to the filing of the application, the next Office Action should not be made “final” as such an action would be contrary to the letter and the spirit of the patent laws and regulations. MPEP 706.07 provides in relevant part, “The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application.The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.”

Applicant’s counsel requests the courtesy of a telephone interview in the event it would expedite prosecution of the present case. Applicant’s counsel can be reached directly at (303) 863-2977.

Respectfully submitted,

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